

RESTRICTING INDIAN GAMING TO HOMELANDS OF
TRIBES ACT OF 2006

SEPTEMBER 13, 2006.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 4893]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4893) to amend section 20 of the Indian Gaming Regulatory Act to restrict off-reservation gaming, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Restricting Indian Gaming to Homelands of Tribes Act of 2006”.

SEC. 2. RESTRICTION ON OFF-RESERVATION GAMING.

Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719) is amended—
(1) by amending subsection (b)(1) to read as follows:

“(b)(1) Subsection (a) will not apply when lands are taken in trust for the benefit of an Indian tribe that is newly recognized, restored, or landless after the date of the enactment of subsection (f), including those newly recognized under the Federal Acknowledgment Process at the Bureau of Indian Affairs, and the following criteria are met:

“(A) The Secretary determines that such lands are within the State of such tribe and are within the primary geographic, social, historical, and temporal nexus of the Indian tribe.

“(B) The Secretary determines that the proposed gaming activity would not be detrimental to the surrounding community and nearby Indian tribes.

“(C) Concurrence by the Governor in conformance with laws of that State.

“(D) Mitigation by the Indian tribe in accordance with this subparagraph. For the purposes of the Indian tribe mitigating the direct impact on the county or parish infrastructure and services, the Indian tribe shall negotiate and sign, to the extent practicable during the compact negotiations described in section 11(d)(3), a memorandum of understanding with the county or parish govern-

ment. Such mitigation requirements shall be limited to the direct effects of the tribal gaming activities on the affected county or parish infrastructure and services. If a memorandum of understanding is not signed within one year after the Indian tribe or county or parish has notified the other party and the Secretary, by certified mail, a request to initiate negotiations, then the Secretary shall appoint an arbitrator who shall establish mitigation requirements of the Indian tribe.”; and

(2) by adding at the end the following new subsections:

“(e)(1) In order to consolidate class II gaming and class III gaming development, an Indian tribe may host one or more other Indian tribes to participate in or benefit from gaming conducted under this Act and in conformance with a Tribal-State compact entered into by each invited Indian tribe and the State under this Act upon any portion of Indian land that was, as of October 17, 1988, located within the boundaries of the reservation of the host Indian tribe, so long as each invited Indian tribe has no ownership interest in any other gaming facility on any other Indian lands and has its primary geographic, social, historical, and temporal nexus to land in the State in which the Indian land of the host Indian tribe is located.

“(2) An Indian tribe invited to conduct class II gaming or class III gaming under paragraph (1) may do so under authority of a lease with the host Indian tribe. Such a lease shall be lawful without the review or approval of the Secretary and shall be deemed by the Secretary to be sufficient evidence of the existence of Indian land of the invited Indian tribe for purposes of Secretarial approval of a Tribal-State compact under this Act.

“(3) Notwithstanding any other provision of law, the Indian tribes identified in paragraph (1) may establish the terms and conditions of their lease and other agreements between them in their sole discretion, except that in no case may the total payments to the host Indian tribe under the lease and other agreements exceed 40 percent of the net revenues (defined for such purposes as the revenue available to the 2 Indian tribes after deduction of costs of operating and financing the gaming facility developed on the leased land and of fees due to be paid under the Tribal-State compact) of the gaming activity conducted by the invited Indian tribe.

“(4) An invited Indian tribe under this subsection shall be deemed by the Secretary and the Commission to have the sole proprietary interest and responsibility for the conduct of any gaming on lands leased from a host Indian tribe.

“(5) Conduct of gaming by an invited Indian tribe on lands leased from a host Indian tribe under this subsection shall be deemed by the Secretary and the Commission to be conducted under the Act upon Indian lands—

“(A) of the invited Indian tribe;

“(B) within the jurisdiction of the invited Indian tribe; and

“(C) over which the invited Indian tribe has and exercises governmental power.

“(6) Notwithstanding the foregoing, the gaming arrangement authorized by this subsection shall not be conducted on any Indian lands within the State of Arizona.

“(7) Any gaming authorized by this subsection shall not be conducted unless it is—

“(A) consistent with the Tribal-State compacting laws of the State in which the gaming activities will be conducted;

“(B) specifically identified as expressly authorized in a tribal-State compact of the invited Indian tribe approved by an Act of the legislature of the State in which the gaming will be conducted; and

“(C) specifically identified as expressly authorized in a tribal-State compact of the invited Indian tribe approved by the Governor of the State in which the gaming will be conducted.

“(8) Host tribe compacts shall not be affected by the amendments made by this subsection.

“(f) An Indian tribe shall not conduct gaming regulated by this Act on Indian lands outside of the State in which the Indian tribe is primarily residing and exercising tribal government authority on the date of the enactment of this subsection, unless such Indian lands are contiguous to the lands in the State where the tribe is primarily residing and exercising tribal government authority.”.

SEC. 3. STATUTORY CONSTRUCTION.

(a) IN GENERAL.—The amendment made by paragraph (1) of section 2 shall be applied prospectively. Compacts or other agreements that govern gaming regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on Indian lands that were in effect on the date of the enactment of this Act shall not be affected by the amendments made by paragraph (1) of section 2.

(b) EXCEPTION.—The amendments made by section 2 shall not apply to any lands for which an Indian tribe, prior to March 7, 2006, has submitted to the Secretary

or Chairman a fee-to-trust application or written request requiring an eligibility determination pursuant to section 20(b)(1)(A) or clauses (ii) or (iii) of section 20(b)(1)(B) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(A), 2719(b)(1)(B)(ii), and 2719(b)(1)(B)(iii), respectively); provided that such lands are located within—

(1) the State where the Indian tribe primarily resides; and

(2) an area where the Indian Tribe has a primary geographical, historical, and temporal nexus.

(c) FURTHER EXCEPTION.—The amendments made by section 2 shall not affect the right of any Indian Tribe to conduct gaming on Indian lands that are eligible for gaming pursuant to section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719), as determined by the National Indian Gaming Commission, Secretary of the Interior or a Federal court prior to the date of the enactment of this Act.

SEC. 4. REGULATIONS REQUIRED.

Not later than 180 days after the date of the enactment of this Act, the Secretary of the Interior shall promulgate regulations to implement section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719). The regulations shall require tribal applicants for any of the exceptions listed in section 20 of the Indian Gaming Regulatory Act to have an aboriginal or analogous historic connection to the lands upon which gaming activities are conducted under the Indian Gaming Regulatory Act.

PURPOSE OF THE BILL

The purpose of H.R. 4893 is to amend section 20 of the Indian Gaming Regulatory Act to restrict off-reservation gaming.

BACKGROUND AND NEED FOR LEGISLATION

In the late 1970s many Indian tribes, aware that there were no federal bans on Indian gaming, were involved in “high-stakes” bingo operations on their reservation lands. In 1987, the United States Supreme Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) affirmed the rights of American Indian tribal governments to conduct gaming operations on their sovereign reservation lands. The next year Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA, Public Law 100–497, 25 U.S.C. 2501 et seq.) to provide a regulatory framework for the implementation of the *Cabazon* case. In the years following, the Indian gaming industry exploded in terms of the number of facilities and the amount of gaming revenue. For example, the revenue from Indian gaming increased from \$5.45 billion in 1995 to nearly \$23 billion in 2006. In 2006, there were over 400 Indian gaming facilities on Indian lands throughout the United States.

IGRA consists of 24 sections designed to provide clear standards and regulations for the conduct of gaming on Indian lands. Prior to enactment of IGRA, there were no uniform standards for federal and State governments to follow when engaging with federally-recognized Indian tribes on the construction, conduct, and regulation of casino gaming. IGRA made it clear that the role of the federal government was strictly limited to that of ensuring that the Indian tribe is the primary beneficiary of the gaming operation and to promote a federal Indian policy of tribal economic development, tribal self-sufficiency, and strong tribal government functions. To help protect Indian gaming revenue for tribal purposes only, IGRA also established the National Indian Gaming Commission to ensure that tribal gaming would continue to be a function of the Indian tribal government, and to act as the ultimate authority for establishing federal standards for gaming on tribal lands.

The Congressional purpose of enacting IGRA was to protect and regulate Indian gaming on lands that are located within or contig-

uous to the boundaries of the Indian tribe's reservation prior to October 17, 1988,¹ and IGRA generally prohibits gaming on lands acquired in trust after that date. However, Section 20 of IGRA also contains several exceptions to this general rule which over the years has led to controversy and conflict between individual tribes, and State, local, and federal governments. Instead of seeking to bring economic development to the Indian reservation, many tribes since 1988 have sought to bring the Indian reservation to the economic development. Currently there are over 50 applications on file with the Department of the Interior for approval to build an Indian casino elsewhere than on lands that are located within or contiguous to the boundaries of a Indian tribe's reservation as it existed prior to 1988.

IGRA contains four exceptions to the general rule prohibiting such "off-reservation" gaming. These exceptions contained in Section 20(b)(1) are: (1) the two-part determination; (2) the land claim exception; (3) the restored land exception; and (4) the initial reservation exception. Each of these exceptions allows a tribe to construct a gaming facility on lands that are not within or contiguous to a reservation existing on October 17, 1988. The controversies surrounding these exceptions were the focus of six oversight and legislative hearings before the Committee on Resources where testimony was taken on the impact of gaming activities on local communities.

As ordered reported, H.R. 4893 would significantly revise the exceptions in Section 20(b)(1) of IGRA. First, the legislation eliminates the two-part determination and the land claim exceptions. It should be noted that eliminating the land claim exception does not affect the power of Congress to settle land claims in any appropriate and Constitutional manner through a separate Act of Congress. Second, the bill allows newly recognized, restored, or landless tribes to conduct gaming on lands acquired in trust, but only when the following criteria are met: (1) the Secretary of the Interior determines the lands are located in the State in which the tribe primarily resides and exercises jurisdiction; (2) the lands are within the primary geographic, social, historical, and temporal nexus of the tribe; (3) the Secretary determines the proposed gaming activity would not be detrimental to the surrounding community and nearby Indian tribes; (4) the Governor of the State where the proposed gaming is to be conducted concurs in accordance with the State's laws; and (5) the tribe signs a memorandum of understanding with the county or parish in which the tribe and its facility are located in order to mitigate direct impacts from the proposed gaming facility.

The nexus requirement is derived from case law on IGRA's restored land exception.² Case law has so far suggested that restored lands cannot be all lands with which a tribe has had minimal contact. A tribe must have a historical nexus to the land and that the restoration be sufficiently close in time to the date of the recognition.³ The Committee believes that this nexus requirement extends beyond the circumstance of restored lands and should also be ap-

¹ 25 U.S.C. 2719(a).

² See *Grand Traverse Band of Ottawa & Chippewa Indian v. United States Atty.*, 198 F. Supp. 2d 920, 937.

³ *Id.*

plied to lands designated as an initial reservation by the Secretary for newly recognized tribes as well as for tribes that do not currently have lands taken into trust by the Secretary for the purposes of gaming. Under this standard, both a historical and temporal requirement should be used to prove that the tribe has both a past and present, modern-day connection to the proposed land acquisition. In addition, the tribe must have a significant geographic link to the proposed lands to be taken into trust for the purposes of gaming. Under H.R. 4893 as ordered reported, all three requirements (historical, temporal and geographic) must be present in a tribal fee-to-trust application for the purposes of gaming.

In addition to the new Section 20(b)(1), H.R. 4893 also adds a new Section 20(e)(1) to the bill which would authorize a federally-recognized Indian tribe to partner with another tribe on existing Indian lands as they existed prior to October 17, 1988, for the purposes of building a gaming facility. The criteria for an invited tribe to partner with another tribe on its existing Indian lands are as follows: (1) the host tribe and invited tribe must sign a lease that will charge no more than 40% net revenue per year for the entire term of the lease; (2) the invited tribe must show it has a geographic, social, historical and temporal nexus to the tribe it wishes to partner with; (3) the invited tribe must obtain a gaming compact expressly authorizing the gaming partnership from the Governor and have that compact ratified in the State legislature; (4) the invited tribe must be deemed by the Secretary and the Indian Gaming Commission that it will have the sole proprietary interest and responsibility for the conduct of any gaming on lands leased from the host tribe; and (5) each invited tribe must have no interest in any other gaming facility on any other Indian lands.

It should be noted that H.R. 4893 affects only tribal gaming regulated by IGRA. H.R. 4893 does not affect gaming not regulated by the IGRA and thus would not impede the ability of tribes to operate State-licensed and regulated commercial business enterprises on non-reservation land.

COMMITTEE ACTION

H.R. 4893 was introduced on March 7, 2006, by Resources Committee Chairman Richard Pombo (R-CA). The bill was referred to the Committee on Resources. Two hearings were held on the bill: one on March 15, 2006, and the other on April 5, 2006. On July 26, 2006, the Full Resources Committee met to consider the bill. Mr. Pombo and Ranking Member Nick J. Rahall II (D-WV) offered an amendment in the nature of a substitute. The amendment required the concurrence of the Governor in conformance with the laws of the State, deleted both the tribal veto provision and the tribally-financed local referendum and added a grandfather provision to Section 2 of H.R. 4893. The requirement of concurrence of the State legislature was perceived as a problem by Members because the intention behind IGRA was for the Governor of a State to be a primary actor when deciding whether to concur with off reservation fee-to-trust petitions. Many Members felt that concurrence by both the Governor and the State legislature was too big a change in federal Indian policy. Another requirement in the introduced version of H.R. 4893 that received questions from Committee Members was the tribal veto of tribal fee-to-trust petitions for gam-

ing purposes. Members felt that the tribal veto was unnecessary and raised several possible legal concerns that did not justify keeping the provision in the bill. Finally, many Committee Members scrutinized the tribally-financed local referendum in the introduced bill. Members felt that the local referendum provision would only encourage casino developers to finance this very expensive referendum provision and would ultimately exacerbate and not diminish controversy between tribes and local communities.

The Committee was informed by both the Arizona Congressional delegation and by several Arizona Indian tribes that the gaming co-location provision located in subsection (2)(e)(I) of the introduced bill would destroy the unique multi-party, Tribal-State compacting arrangement that was approved by the people of the State of Arizona in 2002. Therefore, under the amendment, the tribes located in the State of Arizona will not be able to take advantage of the gaming co-location provisions in subsection (2)(e)(1). The final change in the amendment to H.R. 4893 is the addition of a grandfather provision. Many Members of this Committee reported that they had constituent tribes who had already filed fee-to-trust petitions for the purposes of gaming with the Department of Interior and are currently awaiting consideration. Concerns were voiced that many of these tribes who have invested substantial resources into complying with existing Department rules regarding proposed gaming projects would be unfairly eliminated should H.R. 4893 be enacted into law. The amendment allows the Department consider any tribal fee-to-trust application for the purposes of gaming under the current law as long as the tribe has a geographic, historical and temporal nexus to the proposed parcel it intends to place into trust.

Congressman Don Young (R-AK) offered an amendment to the amendment in the nature of a substitute which stated that H.R. 4893 shall not affect the right of any Indian tribe to conduct gaming on Indian lands that are eligible for gaming under Section 20 of IGRA. The amendment was agreed to by voice vote.

Congressman Dale Kildee (D-MI) offered two amendments to the amendment in the nature of a substitute. The first, which created a new Section 4 to H.R. 4893, would require the Secretary to promulgate regulations on the implementation of Section 20 of IGRA within 180 days, was agreed to by voice vote. The second, which would have struck the majority of Section 1 of H.R. 4893 and replaced it with a mandatory Secretarial determination that a proposed fee-to-trust petition for the purposes of gaming must have a primary geographic, social, historical, and temporal nexus of the Indian tribe, was not agreed to by a rollcall vote of 10 ayes and 23 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: July 27, 2006

Convened: _____

Adjourned: _____

Meeting on: Markup of HR 4893 - Kildee (.019) amendment to Pombo Amendment in the Nature of a Substitute

☐ Attendance ☒ Recorded Vote Vote Number 46 Total: Yeas 10 Nays 23

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		<i>Mrs. Napolitano, CA</i>	✓		
<i>Mr. Rahall, WV</i>				Mr. Walden, OR		✓	
Mr. Young, AK				<i>Mr. Tom Udall, NM</i>	✓		
<i>Mr. Miller, CA</i>		✓		Mr. Tancredo, CO		✓	
Mr. Saxton, NJ				<i>Mr. Mark Udall, CO</i>	✓		
<i>Mr. Markey, MA</i>				Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA				<i>Mr. Grijalva, AZ</i>	✓		
<i>Mr. Kildee, MI</i>	✓			Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		<i>Mr. Cardoza, CA</i>		✓	
<i>Mr. DeFazio, OR</i>				Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD				<i>Ms. Bordallo, Guam</i>		✓	
<i>Mr. Faleomavaega, AS</i>				Mr. Pearce, NM		✓	
Mr. Calvert, CA				<i>Ms. Herseeth, SD</i>	✓		
<i>Mr. Abercrombie, HI</i>		✓		Mr. Brown, SC			
Mrs. Cubin, WY, vice chair				<i>Mr. Costa, CA</i>		✓	
<i>Mr. Ortiz, TX</i>		✓		Mrs. Drake, VA		✓	
Mr. Radanovich, CA		✓		<i>Mr. Melancon, LA</i>		✓	
<i>Mr. Pallone, NJ</i>	✓			Mr. Fortuño, PR			
Mr. Jones, NC		✓		<i>Mr. Boren, OK</i>	✓		
<i>Mrs. Christensen, VI</i>				Miss McMorris, WA		✓	
Mr. Cannon, UT				Mr. Jindal, LA		✓	
<i>Mr. Kind, WI</i>	✓			Mr. Gohmert, TX			
Mr. Peterson, PA		✓		Mrs. Musgrave, CO		✓	
<i>Mr. Inslee, WA</i>	✓			<i>Vacancy</i>			
Mr. Gibbons, NV		✓					
				Total	10	23	

The following amendments to the amendment in the nature of a substitute were offered and withdrawn:

An amendment by Congressman Dennis A. Cardoza (D-CA) that would have excluded H.R. 4893 from applying to any tribe that was restored to federal recognition by judicial stipulation entered in *Hardwick v. United States*.

An amendment by Congressman Ron Kind (D-WI) which would have grandfathered any tribal-State gaming compact that expressly authorized certain trust lands to be used for gaming.

An amendment by Congressman Jim Costa (D-CA) which mandated that each State create a Tribal Slot Master Plan, setting an official State cap on slot machines at Indian casinos before approving any tribal-State gaming compacts.

An amendment by Congressman Dan Boren (D-OK) which would have eliminated the memorandum of understanding provision between the tribe and the State and substituted the provision with a informal consultation process with the State, local, and tribal officials.

An amendment by Congressman Jay Inslee (D-WA) which would have overturned a series of court decisions and mandated that States negotiate with tribes for gaming compacts.

Congressman Eni F.H. Faleomavaega (D-AS) offered an amendment to the amendment which would have excluded H.R. 4893 from applying to lands taken into trust as part of the settlement of a tribal land claim that either appeared on the list of such claims published by the Secretary on March 31, 1983, or were asserted by the affected tribes in court or administratively before October 17, 1988. The amendment was not adopted by voice vote.

The Pombo-Rahall amendment in the nature of a substitute, as amended, was adopted by voice vote. The bill, as amended, was favorably reported to the House of Representatives by a rollcall vote of 27 ayes and 9 noes, as follows:

COMMITTEE ON RESOURCES

U.S. House of Representatives

109th CongressDate: July 27, 2006

Convened: _____

Adjourned:

Meeting on: Markup of HR 4893 - Motion favorably reporting HR 4893 to the House of Representatives, as amended, by a Roll Call Vote of 27 Yeas and 9 Nays.

☐ Attendance ☒ Recorded Vote Vote Number 47 Total: Yeas 27 Nays 9

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman	✓			Mrs. Napolitano, CA		✓	
Mr. Rahall, WV	✓			Mr. Walden, OR	✓		
Mr. Young, AK				Mr. Tom Udall, NM		✓	
Mr. Miller, CA	✓			Mr. Tancred, CO	✓		
Mr. Saxton, NJ				Mr. Mark Udall, CO		✓	
Mr. Markey, MA				Mr. Hayworth, AZ	✓		
Mr. Gallegly, CA				Mr. Grijalva, AZ		✓	
Mr. Kildee, MI		✓		Mr. Flake, AZ	✓		
Mr. Duncan, TN	✓			Mr. Cardoza, CA	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD				Ms. Bordallo, Guam	✓		
Mr. Faleomavaega, AS				Mr. Pearce, NM	✓		
Mr. Calvert, CA				Ms. Herseth, SD		✓	
Mr. Abercrombie, HI	✓			Mr. Brown, SC	✓		
Mrs. Cubin, WY, vice chair				Mr. Costa, CA	✓		
Mr. Ortiz, TX	✓			Mrs. Drake, VA	✓		
Mr. Radanovich, CA	✓			Mr. Melancon, LA	✓		
Mr. Pallone, NJ		✓		Mr. Fortuño, PR			
Mr. Jones, NC	✓			Mr. Boren, OK	✓		
Mrs. Christensen, VI				Miss McMorris, WA	✓		
Mr. Cannon, UT				Mr. Jindal, LA	✓		
Mr. Kind, WI	✓			Mr. Gohmert, TX			
Mr. Peterson, PA	✓			Mrs. Musgrave, CO	✓		
Mr. Inslee, WA		✓		Vacancy			
Mr. Gibbons, NV	✓						
				Total	27	9	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, clause 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4893—Restricting Indian Gaming to Homelands of Tribes Act of 2006

H.R. 4893 would amend provisions in the Indian Gaming Regulatory Act (IGRA) related to off-reservation Indian gaming. Specifically, the legislation would add new restrictions on tribes operating Indian gaming outside their existing reservations. Based on information from the Department of the Interior (DOI), CBO estimates that implementing H.R. 4893 would not have a significant impact on the federal budget. Enacting the bill would not affect revenues or direct spending.

H.R. 4893 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would limit the ability of tribes to operate gaming on land put in trust after 1988. Because both the outlook for gaming on these lands under current law and the impact of the changes made by the bill are very uncertain, CBO cannot determine whether the aggregate cost to tribes would exceed the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation) in any of the next five years. The bill contains no private-sector mandates as defined in UMRA.

The bill would amend Section 20 of the IGRA, which generally prohibits gaming on lands placed into trust after October 17, 1988 (IGRA's enactment date). Section 20 includes a number of exceptions to that rule, but this bill would narrow those exceptions, further limiting tribes' opportunities to operate gaming. One exception now allows tribes to operate gaming if they receive a special determination from DOI and approval of the state's governor. H.R. 4893 would eliminate these "two-part determinations" for all but those tribes that had an application pending before March 7, 2006. It also would add new conditions even for tribes that submitted their applications before that date. In addition, the bill would impose new conditions to the exceptions for newly created or restored tribes, including requirements that these tribes gain the governor's approval and mitigate the direct effects of gaming on local governments. Finally, the bill would completely eliminate the exception for land acquired through the settlement of a land claim.

The costs of these new mandates would include the lost earnings of any tribe unable to operate gaming under IGRA because of these changes, as well as any additional expenses tribes might incur to mitigate the effects of gaming on the local communities. Based on information provided by DOI, CBO estimates that the new conditions imposed by this bill would affect, at least to some extent, about 50 applications from tribes seeking approval from DOI for gaming on recently acquired lands. It is difficult to predict how many of those, if any, would be approved in the next five years under current law, or how many of that group would be eliminated or delayed as a result of this bill, but the lost earnings from even one gaming operation could be substantial. A number of existing Indian gaming operations have annual revenues of more than \$100 million. CBO also cannot predict how much more tribes would pay to local communities as a result of this bill, in part because tribes often agree to make similar payments under current law.

Some provisions in H.R. 4893 would benefit Indian tribes, as well as local governments. The bill would allow tribes to create partnerships, where one tribe would host a gaming facility for another tribe. Also, requiring tribes to make payments to local governments would benefit those governments.

On May 17, 2006, CBO transmitted a cost estimate for S. 2078, the Indian Gaming Regulatory Act of 2006, as ordered reported by the Senate Committee on Indian Affairs on March 29, 2006. Both pieces of legislation would restrict off-reservation gaming; however, the Senate bill contains additional provisions related to the National Indian Gaming Commission.

The staff contacts for this estimate are Matthew Pickford (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

The Congressional Budget Office was unable to determine whether this bill exceeded the threshold for reporting an intergovernmental mandate under Public Law 104-4. The analysis of this mandate is contained in the cost estimate included in this report. The bill provides no authorization of appropriations or any direct spending authorization. The Committee intends that the intergov-

ernmental mandate be entirely unfunded. The Committee is unaware of any specific existing sources of federal assistance to cover direct costs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

SECTION 20 OF THE INDIAN GAMING REGULATORY ACT

GAMING ON LANDS ACQUIRED AFTER ENACTMENT OF THIS ACT

SEC. 20. (a) * * *

[(b)(1) Subsection (a) will not apply when—

[(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

[(B) lands are taken into trust as part of—

[(i) a settlement of a land claim,

[(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

[(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.]

(b)(1) Subsection (a) will not apply when lands are taken in trust for the benefit of an Indian tribe that is newly recognized, restored, or landless after the date of the enactment of subsection (f), including those newly recognized under the Federal Acknowledgment Process at the Bureau of Indian Affairs, and the following criteria are met:

(A) The Secretary determines that such lands are within the State of such tribe and are within the primary geographic, social, historical, and temporal nexus of the Indian tribe.

(B) The Secretary determines that the proposed gaming activity would not be detrimental to the surrounding community and nearby Indian tribes.

(C) Concurrence by the Governor in conformance with laws of that State.

(D) Mitigation by the Indian tribe in accordance with this subparagraph. For the purposes of the Indian tribe mitigating the direct impact on the county or parish infrastructure and services, the Indian tribe shall negotiate and sign, to the extent practicable during the compact negotiations described in section 11(d)(3), a memorandum of understanding with the county or

parish government. Such mitigation requirements shall be limited to the direct effects of the tribal gaming activities on the affected county or parish infrastructure and services. If a memorandum of understanding is not signed within one year after the Indian tribe or county or parish has notified the other party and the Secretary, by certified mail, a request to initiate negotiations, then the Secretary shall appoint an arbitrator who shall establish mitigation requirements of the Indian tribe.

* * * * *

(e)(1) In order to consolidate class II gaming and class III gaming development, an Indian tribe may host one or more other Indian tribes to participate in or benefit from gaming conducted under this Act and in conformance with a Tribal-State compact entered into by each invited Indian tribe and the State under this Act upon any portion of Indian land that was, as of October 17, 1988, located within the boundaries of the reservation of the host Indian tribe, so long as each invited Indian tribe has no ownership interest in any other gaming facility on any other Indian lands and has its primary geographic, social, historical, and temporal nexus to land in the State in which the Indian land of the host Indian tribe is located.

(2) An Indian tribe invited to conduct class II gaming or class III gaming under paragraph (1) may do so under authority of a lease with the host Indian tribe. Such a lease shall be lawful without the review or approval of the Secretary and shall be deemed by the Secretary to be sufficient evidence of the existence of Indian land of the invited Indian tribe for purposes of Secretarial approval of a Tribal-State compact under this Act.

(3) Notwithstanding any other provision of law, the Indian tribes identified in paragraph (1) may establish the terms and conditions of their lease and other agreements between them in their sole discretion, except that in no case may the total payments to the host Indian tribe under the lease and other agreements exceed 40 percent of the net revenues (defined for such purposes as the revenue available to the 2 Indian tribes after deduction of costs of operating and financing the gaming facility developed on the leased land and of fees due to be paid under the Tribal-State compact) of the gaming activity conducted by the invited Indian tribe.

(4) An invited Indian tribe under this subsection shall be deemed by the Secretary and the Commission to have the sole proprietary interest and responsibility for the conduct of any gaming on lands leased from a host Indian tribe.

(5) Conduct of gaming by an invited Indian tribe on lands leased from a host Indian tribe under this subsection shall be deemed by the Secretary and the Commission to be conducted under the Act upon Indian lands—

(A) of the invited Indian tribe;

(B) within the jurisdiction of the invited Indian tribe; and

(C) over which the invited Indian tribe has and exercises governmental power.

(6) Notwithstanding the foregoing, the gaming arrangement authorized by this subsection shall not be conducted on any Indian lands within the State of Arizona.

(7) Any gaming authorized by this subsection shall not be conducted unless it is—

(A) *consistent with the Tribal-State compacting laws of the State in which the gaming activities will be conducted;*

(B) *specifically identified as expressly authorized in a tribal-State compact of the invited Indian tribe approved by an Act of the legislature of the State in which the gaming will be conducted; and*

(C) *specifically identified as expressly authorized in a tribal-State compact of the invited Indian tribe approved by the Governor of the State in which the gaming will be conducted.*

(8) *Host tribe compacts shall not be affected by the amendments made by this subsection.*

(f) *An Indian tribe shall not conduct gaming regulated by this Act on Indian lands outside of the State in which the Indian tribe is primarily residing and exercising tribal government authority on the date of the enactment of this subsection, unless such Indian lands are contiguous to the lands in the State where the tribe is primarily residing and exercising tribal government authority.*

